

MINUTES OF THE REGULAR MEETING OF DECEMBER 13, 1990

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, December 13, 1990, at 7:45 P.M. in the County Council Chambers, Room 115, the Courthouse, Georgetown, Delaware, with the following present:

Mr. Allen, Mr. Ralph, Mrs. Monaco, Mr. Hickman, Mr. Smith, Mr. Berl - Attorney, Mr. Lank - Director, and Mr. Moore - Planner I.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to approve the minutes of November 29, 1990, as circulated.

PUBLIC HEARINGS

1. RE: C/U #955--M. J. Webb Farms, Inc.

David Rutt, attorney, and Mr. Webb were present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred for a Borrow Pit at the west end of a private road, 1,780 feet west of Route 595, 200 feet northwest Route 606, and to be located on a parcel containing 64.58 acres more or less.

Mr. Lank summarized comments received from the D.N.R.E.C. Land Use Planning Act Coordinator, the Sussex Conservation District, and the State Division of Highways.

Mr. Lank read into the record a letter in opposition received from V. George Carey, State Representative.

Mr. Lank stated a petition in opposition to this application was received containing 13 signatures.

Mr. Webb stated the area around the proposed site is sparsely populated and mostly wooded. The site has been tested by soil scientists and contains select borrow material.

Mr. Rutt stated the applicant has a letter from W. P. Ellingsworth stating their intent to purchase the dirt if this application is approved. The applicant would require a road maintenance agreement with the private contractor hauling the dirt.

Joseph Conaway, Consultants Unlimited, stated all access to the site would be from Route 595, existing trees would be retained as a buffer around the project, there would be no filling of wetlands, when completed the pond would be used for commercial fish raising, and there is a need in this area for dirt for future highway projects.

Mr. Rutt presented a petition containing seven (7) signatures of persons having no objection to this application.

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Howard King, Joseph Woytko, Eugene Baltrush, Lawrence Sammons, Phillip Barton, Mrs. Thomas Montgomery, John Stubbs, Susan Derosho, Tom Montgomery, Victor Street, and Joe Gardener spoke in opposition to this application due to existing dangerous conditions on Route 595, the possible impact on existing wells and the water table, danger to area pets & children, noise, dust, truck traffic, and damage to existing roads.

At the conclusion of the public hearings, the Chairman referred back to this application.

The Commission discussed the points and issues raised during the public hearing.

The Commission found, based on comments received from the D.N.R.E.C. Land Use Planning Act Coordinator, that comments have been requested from the D.N.R.E.C. Division of Air and Waste Management, the Bureau of Archaeology and Historic Preservation, the Department of Transportation, the Department of Agriculture, and the Sussex Conservation District.

The Commission found, based on comments on file from DelD.O.T., that a traffic impact study was originally requested since the site has access to a dirt road, and that DelD.O.T. suggests to the County that any consideration to a Conditional Use be postponed until a study of roadways and an agreement can be reached.

The Commission found, based on information provided by Mr. Lank from a telephone conversation with DelD.O.T. representatives, that DelD.O.T. may be receptive to an agreement to maintain Route 595 and that no use of Route 606 shall be permitted.

The Commission found, based on comments received from the Sussex Conservation District, that no storm flood hazard area or tax ditch is affected, that it may not be necessary for any on-site or off-site drainage improvements, that the soils on-site are primarily Pocomoke sandy loam, which will be suitable for the intended use if water is removed, that in reference to erosion/sediment control, the developer must follow normal recommended erosion/sediment control measures during construction, that slight limitations can be anticipated after completion of the project, that the farmland rating of the soil type is of statewide importance, and that the area is mapped Pocomoke, which is a poorly drained soil with a high water table and could be considered a wetland.

The Commission found that a letter was received from V. George Carey, State Representative, expressing concerns of residents in the area referencing that truck traffic on Route 595, a narrow



road, is a safety hazard, and that the dirt road could be damaged and creates dust.

The Commission found that the applicant was present with legal counsel and a consultant and proposes to utilize the site for a borrow pit that will be converted to an aquaculture project for raising fish when completed.

The Commission found, based on comments by representatives of the application, that the area is sparsely developed, that the access to the site is from dirt roads, that the site is wooded and not a part of the farming operation, that the site contains suitable materials for borrow, that a contractor will be contracted to operate the borrow pit, that the site will be timbered prior to being the borrow operation, that an agreement with DelD.O.T. will be obtained prior to any activity on-site for maintenance of Route 595, that a contractor is willing to maintain the dirt road, that access is proposed to utilize Route 595 to the north and south, that Route 606 is not intended to be utilized since it was recently paved, that Route 595 is used daily by logging trucks, that soils and wetlands have been mapped by a soil scientist, that no filling of wetlands is intended, that no materials shall be placed or stored on wetlands, that the reclamation plan shall comply with the requirements of the Sussex Conservation District, that site activities and the site plan shall conform to all agency requirements, that top soil will be stripped off and stockpiled, that the stockpiled top soil will be stabilized and seeded, that the aquaculture activity will have a positive impact on the area, that no negative impact is anticipated on the health, safety and welfare of the inhabitants of the county, that a need exists for borrow material for road construction in Sussex County, that the site is in close proximity to Route 113 where road construction is proposed, that any activity in Federal 404 wetlands is subject to Corp. of Engineers approval, that the maximum water depth is proposed to be ten (10) feet, that the contractor shall be responsible to maintain dust, that no impact is anticipated on the level of ground water, that the pit will be developed utilizing standard excavation practices not dredges, that the geology of the site will dictate the depth of the pit, and that once the pond is completed and stocked with fish, it will take two (2) years for the first fish to be removed.

The Commission found that a petition in support was submitted with seven (7) signatures.

The Commission found that ten (10) persons spoke in opposition and expressed concerns in reference to the narrowness of Route 595, the sharp turns on Route 595, dust, truck traffic, impact on well water during dry seasons, drawdown of the water table, the length of time that digging may take, childrens safety, school bus traffic

safety, road damage responsibilities, and the loss of the rural quiet neighborhood.

The Commission found that a petition in opposition was submitted with sixteen (16) signatures.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to defer action pending receipt of comments from DelD.O.T.

2. RE: C/U #956--Richard C. Miller

Richard Miller was present on behalf of this application to consider the Conditional Use of land in a GR General Residential District in Lewes and Rehoboth Hundred for a Multi-Family Dwelling Structure (two (2) units) on the northwest side of Washington Street, 162 feet southwest of Jefferson Street, Lot 8, within Rehoboth Manor, and to be located on a parcel containing 8,101 square feet more or less.

Mr. Lank summarized comments received from the State Division of Highways, the Sussex Conservation District, and the Sussex County Engineering Department.

Mr. Lank stated three (3) letters in support of this application have been received.

Mr. Lank stated six (6) letters in opposition to this application have been received.

Mr. Miller stated he plans to convert his existing dwelling into two (2) units. He will live in one unit and rent the other unit. All additions to the structure will be upward. There are other multi-family structures in the immediate area.

Mr. Boughner and Herman Pressel spoke in opposition due to parking and traffic problems, and that the applicant had stated he plans to sell the property if this application is approved.

At the conclusion of the public hearings, the Chairman referred back to this application.

The Commission discussed the points and issues raised during the public hearing.

The Commission found, based on comments received from DelD.O.T., that a traffic impact study was not recommended and that the level of service "C" of Route One will not change as a result of this application.



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The Commission found, based on comments received from the Sussex Conservation District, that no storm flood hazard area or tax ditch is affected, that it may not be necessary for any on-site or off-site drainage improvements, that the Sassafras sandy loam soils on-site have good suitability for the intended use, that in reference to erosion sedimentation control, normal recommended erosion sediment control measures should be followed during construction and vegetation should be maintained after completion of any construction, and that the farmland rating of the soil type is prime.

The Commission found, based on comments received from the County Engineering Department, that there is sufficient wastewater capacity available in the area for the two (2) proposed units.

The Commission found that the applicant was present and plans to utilize the site for a duplex.

The Commission found that three (3) letters of support have been received to date.

The Commission found, based on comments by the applicant, that adequate parking can be provided on-site, that the area has mixed housing with single family dwellings, manufactured homes, condominiums, cottages, a motel, apartments and rentals of all referenced home types, that the additions being built go upward not outward, that no encroachments are proposed into setbacks, that he intends to reside in one unit and to rent the other unit for year round usage, that County water and sewer systems serve the site, and that no negative impacts are anticipated on the neighborhood.

The Commission found that the applicant submitted 39 photos of the site and surrounding area.

The Commission found that six (6) letters have been received in opposition to date.

The Commission found that two (2) persons spoke in opposition and expressed concerns in reference to rental apartments, that the driveway will be blocked by a fire hydrant, the limited front footage, and that the property is for sale.

The Commission found that six (6) letters have been received in opposition to date and expressed concerns of excessive traffic, parking on the street, litter, noise, rentals, and the concerns addressed by the opposition present.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied based on the

record of opposition, the limited parking, and that a precedent may be established.

3. RE: C/Z #1100--Sherfor, Inc.

Eugene Bayard, attorney, Barry Cullum, and Bob Nash, Charles Murphy's office, were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to GR General Residential RPC Residential Planned Community in Indian River Hundred, located on the north side of Route 306, east of Route 305, and to be located on a parcel containing 234.88 acres more or less.

Mr. Lank summarized comments received from the Department of Transportation, the D.N.R.E.C. Land Use Planning Act Coordinator, the Sussex Conservation District, the Sussex County Engineering Office, and the Indian River School District.

Mr. Nash stated the site is presently farm land, approximately 30 acres is already zoned GR General Residential, entrances would be on Route 305 and Route 306, on-site central water would be provided, central septic with spray irrigation would be provided, streets would be constructed to state requirements and would be state maintained, and the project would be phased.

Mr. Cullum stated a recreation area would be provided, a commercial area would be developed, and the project would take approximately ten (10) years to be fully developed.

Charles Howard, real estate broker, spoke in favor of the application.

Til Purnell, Mary Burton, and Henry Glowiak spoke in opposition due to additional traffic, overdevelopment of the area, and no need was shown for additional manufactured home lots in the area.

At the conclusion of the public hearings, the Chairman referred back to this application.

The Commission discussed the points and issues raised during the public hearing.

The Commission found, based on comments received from DelD.O.T., that a traffic impact study has been reviewed, that all intersections in the study area will operate at level of service "D" or better, the joint agreement does not provide for highway related phasing, and that DelD.O.T. recommends that Sussex County consider this rezoning without further regard to traffic impacts.



The Commission found, based on comments received from the D.N.R.E.C. Land Use Planning Act Coordinator, that comments have been requested from the Bureau of Archaeology and Historic Preservation, the Department of Transportation, the Department of Agriculture, and the Sussex Conservation District.

The Commission found, based on comments received from the Sussex Conservation District, that no storm flood hazard area or tax ditch is affected, that it may not be necessary for any on-site or off-site drainage improvements, that Phillips Branch is on the north side of the property, that the soils, overall, have good suitability for the intended use, that small portions have Osier and Fallsington Soils which are somewhat poorly drained, that the developers must follow recommended erosion and sediment control practices during construction, that vegetation must be maintained after completion of the project since large areas of the property have low moisture capacity and low natural fertility, that the farmland rating of the soil type is of statewide importance, that the Evesboro soils have slight limitations for septic tank systems, that Osier and Fallsington soils have severe limitations for septic tank systems due to high water tables.

The Commission found, based on comments received from the County Engineering Department, that the site is approximately 4,000 feet from the Long Neck Wastewater Treatment Site; that they caution against approvals for subdivisions in areas near County wastewater treatment plants, since residential development in close proximity to treatment sites can provide a negative impact on future expansions to the facilities; that if the use is approved, a central wastewater collection system be installed per Ordinance No. 38, and that a pumping station be located along Route 306 for future use as a regional pump station due to the size of the subdivision and its close proximity to the wastewater treatment plant.

The Commission found, based on comments received from the Indian River School District, that this application may have an impact on the district dependent upon the demographics of the constituent population, and dependent upon the time line for any housing construction, the district may have relief through its planned major capitol improvement program by 1996.

The Commission found that Barry Cullum, one of the applicants, was present with legal counsel, a representative of a surveying firm, and a realtor/appraiser.

The Commission found, based on comments by representatives of the application, that the site is fallow farmland, that the area is surrounded by woodlands, that the area is developed primarily with strip lots along Route 305, that 10 to 12 percent of the site is

zoned GR General Residential, that the site is relatively flat with one low spot intended to be converted into a pond, that no State wetlands exist and that Federal 404 wetlands have been mapped, that 570 lots are proposed with 5.7 acres of business area at the corner of Route 306 and Route 305, that a community clubhouse, sports fields and a tot lot are proposed, that other amenities will be determined by the developer and buyers, that a central sewer treatment system is proposed for the northeast corner of the site with spray irrigation, that the system will be designed per County specification, that a major entrance is proposed at Route 305 and a second entrance at Route 306, that central water will be provided, that streets will be built to State specifications and dedicated for maintenance, that approximately 230 lots are located within Indian River School District, and 340 lots within Cape Henlopen School District, that ten (10) phases are proposed, that two (2) sites will be reserved along Route 306 for pump stations, that development of the project will progress through the year 2001, that the site development plans and phasing provide control for restricted uniform development, that the area has been developed with no uniformity, that affordable housing can be provided, that existing GR developments are being impacted by changes in D.N.R.E.C. regulations, that septic problems will be resolved by a central sewer system, that the impact on the community will be a positive upgrade, that property values will appreciate.

The Commission found that the applicant submitted a brochure which includes an introduction, a description of the proposed project, a proposed phasing plan, a map of the general area, two (2) letters of no objection, a street layout map, charts on traffic generation, average daily traffic rates, a P.M. peak hour sketch, an entrance configuration, traffic recommendations, a letter from DelD.O.T., a letter from Public Water Supply Company, Inc., a map showing the County wastewater treatment plant and spray irrigation site, a letter from Simmons Cable TV, a list of proposed retail tenants, and a set of preliminary deed restrictions.

The Commission found that three (3) persons spoke in opposition and questioned the need and expressed concerns over the thousands of undeveloped lots already on record, disagreement with DelD.O.T. comments, that the Long Neck Sewer System is being built to serve Long Neck, that the property must be poorly drained since the ditch along Route 305 is at least four (4) feet deep, traffic, traffic safety, school bus stops, governmental services, that farmland should be preserved, that this size development should be close to an incorporated town with infrastructure, and the loss of the rural atmosphere.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to forward this application to the County Council based



on the record of the presentation by representatives of the application and since a need exists for the RPC Residential Planned Community type of development with proposed phasing.

4. RE: C/Z #1101--David B. Webb

David Webb was present on behalf of this application to amend the zoning map from LI-2 Light Industrial to AR-1 Agricultural Residential in Broad Creek Hundred, located on the north side of Route 490, 1,250 feet west of Conrail Railroad at Blades, and to be located on a parcel containing 15.80 acres more or less.

Mr. Lank summarized comments received from the Department of Transportation, the D.N.R.E.C. Land Use Planning Act Coordinator, and the Sussex Conservation District.

Mr. Webb stated he plans to subdivide the site into 22 single family building lots. The lots would be sold, would be provided with central water, and would have individual on-site septic systems.

Joseph Damon, James Davenport, Jeff Davenport, Bruce Ruark, Roland Downes and Eleanor Downes spoke in opposition due to additional traffic, poor road conditions, and no need was shown for more lots in the area.

At the conclusion of the public hearings, the Chairman referred back to this application.

The Commission discussed the points and issues raised during the public hearing.

The Commission found, based on a comment received from the State Division of Highways, that no comment was necessary from Del D.O.T. since the application was a form of down zoning.

The Commission found, based on comments received from the D.N.R.E.C. Land Use Planning Act Coordinator, that comments have been requested from the D.N.R.E.C. Division of Air and Waste Management, the Division of Fish and Wildlife, the Division of Parks and Recreation, the Division of Soil and Water Conservation, the Bureau of Archaeology and Historic Preservation, the Department of Transportation, and the Sussex Conservation District.

The Commission found, based on comments received from the Sussex Conservation District, that in reference to drainage and flooding, it may not be necessary for any off-site or on-site drainage improvements; that no tax ditch is affected; that it may be necessary to determine the 100 year flood elevation; that in

reference to soils, Evesboro loamy sand soils exist on-site; that the soils along the front of the property are OK; that the soils along the river have steep slopes; that in reference to Erosion and Sediment Control during construction, slight limitations, use normal erosion and sediment control practices, stay off of steep slopes or maintain vegetation and/or silt fences along the river; after completion of construction, maintain vegetation since soils have low moisture capacity and natural fertility; and the Evesboro soils are of statewide importance.

The Commission found that the applicant was present with legal council and plans to subdivide the parcel into twenty-two (22) single family home sites; that central water is proposed, either on-site or from the Town of Blades; that the area west of the site and across Route 490 is residential; that the lots are proposed for sale; that the proposed open space may extend from entrance to entrance on the subdivision and will be maintained by the property owners in the subdivision; that individual septic systems per lot are proposed; and that on-site built homes or modulars are proposed.

The Commission found that seven persons spoke in opposition and expressed concerns over traffic, loss of wildlife and woodlands, fear of annexation with public sewer and water, housing types, and that no need exists for additional lots in the area.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved based on the record of support and since the application is for a residential zoning of an unused industrial site in a predominantly residential area.

5. RE: C/Z #1102--Barton's Landscaping & Robert R. King

Phillip Barton was present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Seaford Hundred, located on the east side of Route 13, 900 feet south of Route 18, and to be located on a parcel containing 4.02 acres more or less.

Mr. Lank summarized comments received from the State Division of Highways, and the Sussex Conservation District.

Mr. Barton stated he plans to use the proposed site as a golf driving range at some future time. Until then, the site would be seeded but not used.

Mr. Barton stated there will be no storage of nursery stock on the proposed site.



No one was present in opposition.

At the conclusion of the public hearings, the Chairman referred back to this application.

The Commission discussed the points and issues raised during the public hearing.

The Commission found, based on comments from DelD.O.T. on July 26, 1990, that the application could proceed since both parcels are extensions to existing C-1 General Commercial uses.

The Commission found, based on comments received from the Sussex Conservation District, that no storm floor hazard area or tax ditch is affected, that it may not be necessary for any on-site or off-site drainage improvements, that the Sassafras sandy loam soils on-site have none to slight limitations, that in reference to erosion and sedimentation control, there are slight chances of erosion if normal erosion/sediment control measures are utilized during construction, that no chance of erosion should be created if vegetation with a recommended fertility program is maintained after completion of any construction, and that the farmland rating of the soil type is prime.

The Commission found that one of the applicants was present and proposes to utilize one tract in the future for a golf driving range and that the other tract is proposed to be an extension of the Griffin parcel to the north, a C-1 General Commercial District utilized for a warehouse for a construction company.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since the application is for expansion of existing C-1 General Commercial Districts and is in close proximity to other commercial uses and districts.

#### OLD BUSINESS

1. RE: C/U #954--Edward J. Kaye

No one was present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Nanticoke Hundred for a 102.87 Acre Expansion to an Existing Borrow Pit and Placement and Operation of a Stump Shredding Device and a Concrete Crushing Device 500 feet west of Route 525, 1,200 feet north of Route 526, and to be located on a parcel containing 102.87 acres more or less which had been deferred since the public hearing on November 15, 1990.

Mr. Lank asked the Commission if they would like the staff to prepare a report on the pros and cons of the application.

There was a consensus of the Commission that the staff should prepare a report.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to defer action.

2. RE: C/Z #1096--W. Nelson Hall

No one was present on behalf of this application of W. Nelson Hall to amend the zoning map from AR-1 Agricultural Residential to GR General Residential in Cedar Creek Hundred, located on the north side of Route 228, 200 feet west of Route 30, and to be located on a parcel containing 18.60 acres more or less which had been deferred since the public hearing on November 15, 1990.

Mr. Moore reported on comments received from Delmarva Power and Light Co.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to defer action.

3. RE: Subdiv. #88-36--Swann Estates, Sec. II

The Commission reviewed a request to revise the Swann Estates, Section II, record plan by designating two (2) areas adjacent to the entrance as reserved for future development instead of open space.

Pete Loewenstein, surveyor, was present on behalf of the request.

Mr. Moore stated that no lots had been sold in Seciton II.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to approve the request.

4. RE: Subdiv. #90-9--Pond View Estates

The Commission reviewed the final subdivision plat for the proposed 24 lot subdivision.

No one was present on behalf of the applicaiton.

Mr. Moore stated that all approvals have been obtained.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to approve the subdivision as a final.



5. RE: Subdiv. #90-29--Nelson Hall

The Commisison reviewed the preliminary plat for a proposed 64 lot subdivision.

Action had been deferred at a previous public hearing pending further information from the D. P. & L. Co.

Mr. Moore stated that he had been contacted by Mr. Dan Massey of the Real Estate Fivision of D. P. & L.

Mr. Moore stated that Mr. Massey had provided a copy of the 1974 transmission line right of way agreement.

Mr. Massey stated that if street construction were to occur within the D. P. & L. right of way as proposed by the applicant, that several terms of the transmission line right of way agreement may be jeopardized, such as the right to increase the number of wires and boltage, right of ingress and egress to and from the right of way, the construciton or reconstruction of the lines andx the potential for structures to be placed within the right of way.

It ws the consensus of the Commission to defer action and to request that the developer resubmit a revised development plan with no street within the D. P. & L. right of way, with the exception of a crossing of the right of way by a street.

6. RE: Sea Colony West, Phase XIII

The Commisison reviewed a request to be able to construct a portion of one (1) building in an area designated as 404 wetlands.

Mike Lynn, Carl Freeman Assoc., Jim Fuqua, attorney, and Charles Smith, wetlands consultant, were present on behalf of the proposal.

Mr. Miller stated taht the site was an isolated 404 wetland and that construction of a pond adjacent to the are will convert the area to upland.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to approve the request.

7. RE: The Preserve  
MR/RPC Site Plan

The Commission reviewed a revised development plan for the approved MR/RPC.

Mike Lynn, Carl Freeman & Assoc., and Jim Fuqua, attorney, were present on behalf of the plan.

Mr. Moore stated that the beach front lots had been reduced from twenty (20) to sixteen (16) lots with lot widths of 75 feet minimum/

Mr. Moore stated that the plan was in compliance with the Code.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to approve the plan as a final.

8. RE: Fifty Foot Right Of Way  
Minor Subdivision Discussion

Richard Berl, Attorney for the Planning and Zoning Commission, discussed several aspects concerning conditions of approval for minor subdivisions and previously approved subdivisions on a fifty (50) foot right of way.

Mr. Moore presented several examples of minor subdivision submittals.

It was the consensus of the Commission that minor subdivisions may be approved on existing roads, irregardless of the road specifications and any fifty (50) foot right of way previously approved by the Commission may provide access for a total of three (3) lots.

Meeting Adjourned 11:45 P.M.

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Lawrence B. Lank, Secretary